RECENT CASES.

AGENCY — AUTHORITY OF TOWN TREASURER. — The plaintiff loaned money to the defendant town, and took certain notes from its treasurer, which he had authority to give. A statute was then passed taking from towns the power to borrow money except for certain purposes, which do not cover this case. The treasurer then gave the plaintiff a new note for the amount of the old ones. *Held*, the plaintiff cannot recover, since the new note was a new contract which the town at that time had no right to make; and, further, the treasurer had no authority to renew a note which he had given with full authority. *Abbott* v. *North Andover*, 14 N. E. Rep. 754 (Mass.).

ASSIGNMENT OF UNEARNED SALARIES. — A Territorial commissioner of immigration assigned a quarter's salary before it was due. *Held*, that the assignment was void as being contrary to public policy. *King* v. *Hawkins*, 16 Pac. Rep. 434 (Ariz.).

BILL OF EXCHANGE — BONA FIDE PURCHASER. — The plaintiff drew a sight bill on a party in Wheeling, W. Va., where the defendant bank is located. It was drawn to the order of the Penn Bank. The Penn Bank indorsed it to the defendant bank, with which it kept a reciprocal account of funds arising from collections. The defendant collected the money and put it to the credit of the Penn Bank, after which there was still due from the Penn Bank to the defendant a considerable sum. The Penn Bank failed, and plaintiff sues the defendant in assumpsit on the ground that the bill was left with the Penn Bank simply for collection. *Held*, he cannot recover. He should have written "For collection" upon the bill in order that defendant should have notice that it was not the bill of the Penn Bank, but of the plaintiff. *Carroll* v. *Exchange Bank*, 4 S. E. Rep. 440 (W. Va.).

CARRIERS — LIABILITY FOR PERSONAL BAGGAGE ONLY. — The plaintiff bought a ticket of the defendant, and had his valise checked by the baggage-master. The valise contained merchandise and no personal baggage. *Held*, he cannot recover for the loss of the valise. *Blumenthal* v. *Maine Cent. R. Co.*, 11 Atl. Rep. 605 (Me.).

CONSTITUTIONAL LAW — ACT IMPAIRING THE OBLIGATION OF CONTRACTS. — The act of the legislature of the State of Iowa, which exempts the homestead of a pensioner purchased with pension money from execution upon a debt due before the purchase, is unconstitutional as impairing the obligation of contracts. Two judges dissent. *Foster* v. *Byrne*, 35 N. W. Rep. 513 (Iowa).

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — Writ of *habeas corpus* by an engineer upon a railroad extending through several States, imprisoned for violation of statutes requiring locomotive engineers in that State to be examined and licensed by a board appointed by the Governor for that purpose. A moderate license fee was exacted. *Held*, the statute was not unconstitutional on the ground of interfering with interstate commerce, in the absence of congressional legislation upon the subject. The statute was treated as a part of the State law of carriers, affecting commerce only indirectly and remotely. Bradley, J., dissented. *Smith* v. *State of Alabama*, U. S. Supreme Court, Jan. 30, 1888, 16 Wash. L. Rep. 101; S. C. 37 Alb. L. J. 172.

CONSTITUTIONAL LAW — POLICE POWER — MEDICAL PRACTICE ACT. — The certificate of a physician cannot be revoked by a State board under a statute authorizing revocation for unprofessional or dishonorable conduct, because he has advertised. The statute which gives the board such arbitrary power is unconsti utional. for a great variety of reasons. *People* v. *McCoy*, 37 Alb. L. J. 113; 20 Chi. Leg. News, 151 (Cook county, Ill.).

CONTRACT — TENDER OF PERFORMANCE UNNECESSARY. — The defendants, before the time for performance, notified the plaintiffs that they would not receive the property contracted for. *Held*, the plaintiffs may sue at once, and the defendants cannot retract their renunciation of the contract. *Windmuller* v. *Pope*, 14 N. E. Rep. 436 (N. Y.).

CURTESY. — The husband is not entitled to curtesy in lands bought with property settled by him upon the wife. *Dugger's Children* v. *Dugger*, 4 S. E. Rep. 171 (Va.). *Contra*, *Soltan* v. *Soltan*, 6 S. W. Rep. 95 (Mo.).

DEED TO WIFE DELIVERED IN ESCROW. — A husband made a deed to his wife, and delivered it to a third person to be handed to the grantee on the death of the grantor. The husband subsequently recovered the deed from the holder, and destroyed it. *Held*, that the title passed to the wife on the delivery of the deed, subject to a life interest in the husband, and that the destruction of the deed was of no effect. *Albright* v. *Albright*, 36 N. W. Rep. 254.

The case follows 60 Wis. 377, which holds that a freehold may be granted to begin *in futuro*.

EQUITY JURISDICTION — SPECIFIC PERFORMANCE OF NEGATIVE AGREEMENT. — The defendant, the Associated Press, agreed to furnish the plaintiff with news by means of the defendant telegraph company, and to furnish news to no other paper in the plaintiff's town. The bill asked an injunction to restrain the defendant from furnishing news to the other papers. The case was decided on the grounds of indefiniteness of the contract and want of jurisdiction; but the court discuss the cases of *Kemble* v. *Kean*, 6 Sim. 333, and *Lumley* v. *Wagner*, 1 DeG., M. & G. 604, and seem to prefer the latter, though they admit that the former represents the weight of American authority. A note collects cases. *Iron Age Pub. Co.* v. *W. U. Tel. Co.*, 26 Cent. L. J. 125 (Ala.).

EVIDENCE — AMBIGUITY IN WILL. — A bequest was left to "my step-son, H. S. Covert." There was no such person; but the testatrix had a step-son, John Harvey Covert, who claimed under the will. The court, against the objection of the defendants, who were the brothers and sisters of the testatrix, permitted the scrivener who drew the will to testify that the testatrix directed him to prepare a will giving the property to her "step-son Harvey;" that he thought that Harvey's initials were "H. S.," and wrote them to designate him. *Covert* v. *Sebern*, 35 N. W. Rep. 636 (Iowa).

It seems, however, that the evidence should not have been admitted. The evidence merely amounts to a declaration by the testatrix that she intended to leave the property to Harvey. "The only case in which evidence of that kind can be received is where the description of the legatee, or of the thing bequeathed, is equally applicable in all its parts to two persons or two things." L. R. 7 H. L. 364, 377. The court failed to distinguish between direct evidence of the testatrix's intention and other extrinsic evidence tending to explain the ambiguity. See *Button* v. *American Tract Soc.*, 23 Vt. 236; *Bernasconi* v. *Atkinson*, 10 Hare, 348; *Drake* v. *Drake*, 8 H. L. C. 172; *Charter* v. *Charter*, L. R. 7 H. L. 364.

EXECUTOR DE SON TORT. — The defendant took fifty cows of a deceased person's estate under a bill of sale which was not sufficiently definite to pass the title. *Held*, that he may be charged as executor in his own wrong. His debt must be postponed in behalf of the other creditors. *Baumgartner* v. *Haas*, 11 Atl. Rep. 588 (Md.).

FOUND PROPERTY — RIGHT TO POSSESSION. — Defendant found a walnut log entangled in a drift, and set it afloat. On account of the breaking of defendant's boom, the log drifted upon plaintiff's land. Defendant removed the log after identifying it. Replevin is brought against him. *Held*, the defendant is entitled against all persons except the original owner. The plaintiff's riparian rights cannot help him. *Deaderick* v. *Oulds*, 5 S. W. Rep. 487 (Tenn.).

GARNISHMENT — BONA FIDE PURCHASER. — The defendant was a purchaser for value without notice of a chattel from a garnishee. The plaintiff seeks to charge him for the conversion of it because of the garnishment in his favor. A demurrer was sustained, on the ground that the garnishment was not a lien upon the chattel. *McGarry* v. *Lewis Coal Co.*, 6 S. W. Rep. 81 (Mo.).

INSURANCE, FIRE — RIGHT OF INSURER WHEN INSURED RECOVERS FROM THE ONE WHO CAUSED THE FIRE. — An insurance company paid a loss caused by a gas explosion. The insured then recovered from the gas company. The insurers brought an action against him for money had and received to recover what they had paid on the policy. Allowed. *Law Assurance Co.* v. *Oakley*, 84 L. T. 280 (Q. B. D.).

LIBEL — PUBLICATION. — A servant on entering the services of a husband and wife handed to the latter a written character from a previous employer. He was dismissed. The husband indorsed on the character the reason for dismissal, and returned it to his wife, who gave it back to the servant. The servant brought an action for libel based on the alleged cause for dismissal, and it was held that there was no evidence of publication, since husband and wife are one person. *Wennhak* v. *Morgan*, 23 Law Jour. Notes of Cases, 31 (Q. B. D.).

MARRIAGE — WHAT CONSTITUTES. — Under the provision of the California code that consent alone will not constitute marriage, but must be followed by a solemnization, "or by a mutual assumption of marital rights, duties, or obligations," it is not necessary to the validity of the marriage that the relation of the parties be made public, and proof of cohabitation is sufficient to show a mutual assumption of marital rights and duties. Two judges dissent. *Sharon* v. *Sharon*, 16 Pac. Rep. 345 (Cal.).

The case contains an elaborate inquiry as to what is essential to a lawful marriage. See, also, *Beverlin* v. *Beverlin*, 27 Am. L. Reg. 94 (W. Va.), with a note giving the law of the different jurisdictions in this country in detail.

NEGLIGENCE — BURDEN OF PROOF. — While in the defendant's depot, in passing through a swinging door, in which was a pane of glass, the plaintiff was cut by reason of the breaking of the glass when he put out his hand to receive the force of the door as it swung from the hand of a person preceding him. The plaintiff contended that this was a *prima facie* case of negligence, because the defendant was a carrier. *Held*, that the rule shifting the burden of proof applied only where the injury was caused by the machinery of transportation or in the course of business peculiar to a railroad company. *Hayman* v. *Pa. R. Co.*, 11 Atl. Rep. 815 (Pa.); *Morris* v. *Railroad Co.*, 13 N. E. Rep. 455 (N. Y.), accord.

NEGLIGENCE — FIRE. — Defendant was burning cornstalks in his own field. The fire, by reason of a change in the wind, got beyond his control and threatened haystacks in a neighbor's meadow. He attempted to save the stacks by setting a back-fire in the meadow, but this fire escaped and burned the stacks. *Held*, that there was no liability unless the defendant was negligent, and that no extraordinary care was required; and further, that there was no error in an instruction to the effect that negligence in the management of the back-fire would not render him liable if the first fire escaped without his fault, and would surely have destroyed the stacks. *Sweeney* v. *Merrill*, 16 Pac. Rep. 454 (Kan.).

PARTNERSHIP. — The defendant A, having an empty storehouse, told the defendant B that he would give him the use of the house and $200 for carrying on his business, in return for one-half the profits of such business. B carried on the business in his own name, and both A and B agree in their testimony "that A was to have one-half the profits for the use of the house and the money." *Held*, that A was a partner as to third persons, and liable for debts contracted by B in the course of the business. *Marbut* v. *Moore*, 4 S. E. Rep. 383 (Ga.).

PARTNERSHIP — DISSOLUTION. — One partner, without the knowledge of his copartner, sold most of the firm property, took the rest with him, and went into business in his own name in another State. As soon as his whereabouts was discovered, the defrauded partner sought him out, and induced him to give a promissory note for a *bona fide* debt. He afterward attached the stock, part of which had been purchased by the absconding partner on his sole credit. *Held*, that the attachment gave a priority over those who had thus furnished goods, since the defrauded partner was justified in treating the partnership as dissolved, and was, therefore, like any other creditor. *Strong* v. *Stapp*, 15 Pac. Rep. 835 (Cal.).

POWER OF APPOINTMENT — EFFECT OF. — It was agreed by a marriage settlement that if either husband or wife should thereafter become entitled to realty or personalty to the value of £500 at one time, and from the same source, it should be settled like the other property. The wife's father bequeathed £4,000 to trustees for such person as she should appoint, and in default of appointment for her separate use, declaring his intention to enable her to defeat the covenant in the marriage settlement. She appointed the whole to herself by successive appointments, each less than £500. *Held*, that it was not bound by the covenant. *Re Lord Gerard*, 84 L. T. 278 (Ch. D.).

RULE AGAINST PERPETUITIES — CHARITABLE TRUST. — Money was devised in trust to pay the income to the incumbent of a certain church and his successors so long as no demand was made for pew-rent; then it was to fall into the residue and be treated as a part of the residuary personal estate. *Held*, that the gift over was not void under the rule against perpetuities, since it was merely a direction that it should go as the law would have made it go. *Re Randell*, 84 L. T. 279 (Ch. D.).

SALE, CONDITIONAL — BONA-FIDE PURCHASER WITHOUT NOTICE. — The plaintiff sold goods to a purchaser, with a stipulation that the title should not pass until the price was all paid. The purchaser mortgaged the goods to the defendants, who had no notice of the agreement. *Held*, the defendants are pro-

tected. The court recognize that the law is settled otherwise in many of the States. *Lincoln* v. *Quynn*, 11 Atl. Rep. 848; 18 Md. L. J. 117 (Md.).

SALE — GOODS ORDERED TO BE MANUFACTURED — DAMAGES. — Defendant ordered lumber of plaintiff to be manufactured in specified sizes for a particular purpose, and to be delivered at a distance. The defendant was to inspect the manufactured lumber before it left the mill. After the lumber had been prepared by the plaintiff according to the contract, the defendant absolutely refused to inspect, receive, or pay for the same. The value of the lumber depended almost wholly on the work and skill of the plaintiff. *Held*, in an action on the contract, that the measure of damages should be the contract price, less the cost of delivery. "The vendor will, of course, in such case hold the property for the vendee." *Black River Lumber Co.* v. *Warner*, 6 S. W. Rep. 210 (Mo.).

The theory of this case is obscure. The court practically enforces specific performance of a contract which would not be enforced in equity. The title to the manufactured goods is said to pass to the vendee, who is required to pay the full contract price. It is not disclosed when the title passes, but it would seem that, if the doctrine of the court is accepted, the title should pass, as in trover, when judgment is obtained and damages are paid. In New York, however, the title is held to pass upon tender of the goods by the seller, if he chooses that it shall then pass. *Mason* v. *Decker*, 72 N. Y. 595; *Des Arts* v. *Leggett*, 16 N. Y. 582. The true rule appears to be that the title, in such cases as this, remains in the vendor until appropriation with the consent of both parties; and that the vendor may recover for the defendant's breach of contract the difference between the market price and the contract price, unless the vendee is fixed by the contract with the risk, when a different rule might prevail.

The court apparently limit their rule to cases where the goods have been manufactured especially for the vendee; but in some States there is no such limitation. In New York the vendor not only has the usual remedy on the contract, but may, after a tender to the vendee, either sell as his agent, and then recover the balance due on the contract, or sue at once for the whole contract price. See *Whitney* v. *Boardman*, 118 Mass. 242, 248, where it is laid down that the plaintiff may recover the expenses of a sale at auction if he notifies the defendant of intention to sell, — that is, he recovers the difference between the contract price and the *net* proceeds of the sale.

STATUTE OF LIMITATIONS — ACKNOWLEDGMENT BY BANKRUPT. — The defendant was the assignee of one S. As such he rejected a claim of the plaintiff filed against the estate, founded upon a promissory note which was barred by the Statute of Limitations. After the filing of the claim, S gave the plaintiff a written promise to pay it. The Iowa statute provides that the cause of action is "revived by a new promise to pay the same." *Held*, the plaintiff may recover. *Hellman* v. *Kiene*, 35 N. W. Rep. 516 (Iowa). Compare *Appeal of Kauffman*, 9 Central Rep. 737 (Pa.).

SUBROGATION — VOLUNTARY PAYMENT OF ANOTHER'S DEBT. — A child died and was buried by an undertaker. Her uncle voluntarily paid the charges of the undertaker without taking an assignment of the claim, or anything to show that it was not intended as an absolute discharge. He now asks to be subrogated to the undertaker's rights against the estate of the deceased. *Held*, that a volunteer can never claim the benefit of the law of subrogation. *Fay* v. *Fay*, 11 Atl. Rep. 122 (N. J.).

TRUSTS — CHARGING TRUST ESTATE. — The plaintiff was engaged as an attorney by the predecessor of the defendant trustees upon legal business connected with the trust estate. His fee not having been paid, he seeks to charge the estate in the defendants' hands. The petition is bad on demurrer. The plaintiff has but a personal claim upon the trustees, the defendants' predecessor; but if he could show that he was insolvent and that the estate had received the fruits of the plaintiff's labor, and that the assets in the defendants' hands were enhanced to that extent, a court of equity might assist him. *Kittredge* v. *Miller*, 19 Weekly Law Bulletin, 119 (Sup'r Ct. Cincinnati).

WILL, NUNCUPATIVE — WITNESS IGNORANT OF LANGUAGE. — Under a statute requiring a nuncupative will to be executed in the presence of three witnesses. The will was written down in French at the time it was made. As the testator uttered each part in French, it was translated to one witness, who could not understand the language. It did not appear that the testator could understand English. *Held*, the will was invalid. The witness might as well have been deaf. *Succession of D'Auterive*, 3 So. Rep. 341 (La.).